



COMMONWEALTH of VIRGINIA

Department of Alcoholic Beverage Control

COMMISSIONERS
ESTHER H. VASSAR, CHAIR
PAMELA O'BERRY EVANS
SUSAN R. SWECKER

2901 HERMITAGE ROAD
P.O. BOX 27491
RICHMOND, VIRGINIA 23261
(804) 213-4400
FAX (804) 213-4411
TDD LOCAL (804) 213-4687

CHIEF OPERATING OFFICER/SECRETARY TO THE BOARD
W. CURTIS COLEBURN, III

CIRCULAR LETTER 06-02

TO: All Virginia Farm Winery Licensees

DATE: June 29, 2006

A handwritten signature in black ink, appearing to read "Francis J. Monahan".

FROM: Francis J. Monahan
Director
Bureau of Law Enforcement

SUBJECT: **ISSUES AND CLARIFICATION FOR FARM WINERY INDUSTRY**

As most of you are aware, the Federal Court has ruled in the case of Brooks v. Daniels that portions of the Virginia statutes dealing with the Virginia farm winery laws were unconstitutional. As a result of this ruling, farm wineries are no longer permitted to wholesale (self-distribute) their products to retailers. Farm wineries desiring to sell their wine to ABC licensed retailers have had to find a Virginia wine wholesaler to do so on their behalf. We trust that all of you have discontinued self-distribution and have designated wholesalers to distribute your brands to retail.

With that above referenced change there will be other minor changes in processes. First, although you may appoint more than one wholesaler, you may not appoint more than one wholesaler within a specified sales area. Please do not forget that the Attachment A and B forms must be submitted for your brands to be distributed by those wholesalers you appoint. Our staff in Tax Management have asked that we remind you that they are more than happy to assist you with these filings or any other questions you may have regarding the designation process. They can be reached at 804.213.4555. Additionally, we have attached copies of the Attachment A and B forms and they may also be found online at:

<http://www.abc.virginia.gov/enforce/forms/enfforms.htm>

As a result of the limitations placed on the privileges of farm winery licenses the department has had to reevaluate the monthly reporting requirements that each winery must complete for Tax Management. Rather than completely overhauling the current process of remitting the monthly excise tax, we will need you to continue with the current method of reporting those taxes. For clarity, please be guided by the following: wines that are reported by Farm Wineries on the monthly Wholesalers Summary of Wine Sales and Taxes Report shall **ONLY** be those wines that have been transferred to the Farm Winery retail operation. A purchase order must be executed and submitted to Tax Management when the wines are

transferred to your retail side. Any wines that are sold to a wholesaler for distribution to other retail outlets must be sold on a purchase order and those purchase orders must be submitted to Tax Management by the wholesaler. Again, please do not hesitate to contact the Tax Management staff if you need assistance with this process.

Additionally, you are no longer permitted to personally deliver wine sold for off premises consumption using your retail privileges. However, this does not prohibit you from continuing to sell wine at your winery for off premises consumption, or selling wine for off premises consumption at approved remote locations. It simply does not allow you or your employees to deliver the wine to the consumer away from the winery or remote location. If you desire to ship wine to consumers via common carrier, you may apply for a shipper's license.

Another key point of the Court ruling was that the practice by the Department of ABC of only selling Farm Wines in ABC stores is unconstitutional. The General Assembly did not change the law to allow for all wines to be sold in ABC stores, therefore, we will not be selling Virginia wines in ABC stores at this time. However, the case is on appeal, and if ABC's appeal is successful on this point we may resume Virginia wine sales.

Finally, Effective July 1, 2006 an additional change in Virginia law will occur in relation to this case. In order to accommodate smaller wholesale wine businesses, a new wholesale wine license tax category was created for licensees selling 30,000 gallons of wine or less per year. The license tax for this new category will be \$185.00 per year. Although you as a farm winery licensee are not eligible to apply for a wholesale license, the hope is that this reduced license tax category will encourage others who may wish to start a wholesale wine business. An applicant may apply for this license prior to July 1, 2006, but a license may not be issued for the new license tax category prior to July 1, 2006.

We are available to assist you with any questions you may have in this new process. Please contact your Compliance Agent, or if you cannot get in contact with your Agent, please contact Mary McDermott at (804) 213-4573 for assistance.